SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 597

MISSISSIPPI POWER COMPANY, ET AL.,
Petitioners,

vs.

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION, ET AL.,
Respondents.

SUPPLEMENT TO BRIEF OF RESPONDENT SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI
Containing
SUMMARY OF ARGUMENT PURSUANT TO RULE 40-1-(f)

(This summary appears in this supplement because it was not detected that the argument would exceed twenty pages until the printed brief was received from the printer)

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Two Theories of Case

Respondent's theory of the case presented by its petition to amend its certificate of March 7, 1963, which theory

was shared by the Commission and the State Supreme Court was that the petition sought authority to make modifications, and additions to the generating and transmission facilities previously authorized in order to handle the increase in loads due to normal load growth occurring during the time that construction was prevented by litigation and a stay order. Petitioners' theory was that since actual construction had not been commenced (regardless of the cause of delay) the Commission could not by certificate amendment authorize increased capacity to meet load growth but Respondent would be held to have abandoned its certificated system and would be required to prove all over again that public convenience and necessity required that it enter the field of generation and transmission with any facilities at all.

Exclusion of Evidence Offered by Petitioners (As Protestants)

All evidence offered by petitioners and excluded was on the question of whether public convenience and necessity required that respondent enter the field of generation and transmission with any facilities at all, a question previously determined by the Commission and the Courts on the original application. Petitioners offered no evidence on the question of whether it would be more economical and efficient and in the public interest for respondent to be authorized to provide increased system capacity as initial construction rather than building the system as originally ~~constructed~~ certificated and making additions.

Cross-Examination

The only denial of cross-examination was on the issue of whether respondent should be permitted to build any facilities at all, falling in precisely the same category as the excluded evidence referred to above.

Usages in Public Utility Regulation

There is a necessary usage in public utility regulation throughout the country which permits and often requires in the public interest that Certificates of Public Convenience and Necessity be amended before or during construction of facilities authorized under them in order to meet changing needs and requirements; and this is especially true in the electrical utility field.

Fourteenth Amendment Requirements

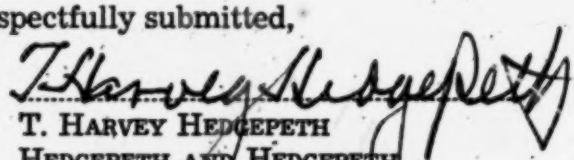
Neither the due process nor equal protection clauses of the Fourteenth Amendment to the Federal Constitution requires any Commission or Court to receive irrelevant evidence. The right to produce evidence of which a person may not be deprived is the right to present relevant evidence.

Petitioners' Arguments and Authorities

Respondent readily agrees that the Fourteenth Amendment requires a full and fair hearing with equal opportunity for all parties to present evidence and cross-examine witnesses. But this relates to relevant evidence. None of the excluded evidence was relevant to any issue presented by the petition to amend; nor were the points on which cross-examination was denied relevant to any such issue. Both related to an issue which had been previously determined on the original application and settled beyond any right of

appeal. Therefore, none of petitioners' authorities are in point.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, T. Harvey Hedgepeth, one of the attorneys of record for South Mississippi Electric Power Association, a Respondent in the above-styled cause, and a member of the Bar of the Supreme Court of the United States, certify that I have this day served the foregoing supplement to brief upon Petitioners and other interested persons in the following manner: by depositing copies thereof in sealed envelopes in the United States Post Office at Jackson, Mississippi, first class postage prepaid, properly addressed to each of the attorneys of record of such parties and other interested persons, to-wit: James S. Eaton, Esquire, 2300 Fourteenth Street, Gulfport, Mississippi, Attorney for Petitioner Mississippi Power Company; Thomas H. Watkins, Esquire, Plaza Building, Jackson, Mississippi, Attorney for Petitioner Mississippi Power Company; Sherwood W. Wise, Esquire, Electric Building, Jackson, Mississippi, Attorney for Petitioner Mississippi Power & Light Company; John K. Keyes, Esquire, Collins, Mississippi, Attorney in the court below, and Donald Wadsworth Williamson, Jr., Esquire, Deposit

Guaranty Bank Building, Jackson, Mississippi, Attorney of Record in this Court for Singing River Electric Power Association, Dixie Electric Power Association, Southern Pine Electric Association, and Pearl River Valley Electric Power Association, Respondents, herein; and Bennett E. Smith, Esquire, Assistant Attorney General of the State of Mississippi, State Office Building, Jackson, Mississippi, Attorney for Mississippi Public Service Commission.

This Nov. 1, 1968.

T. Harvey Hedgepeth

T. HARVEY HEDGEPETH